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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 5 APR 11: 06
REGION IX
75 Hawthorne Street
San Francisco, CA 94105
REGIONAL HEARING CLERK

IN THE MATTER OF:

The Department of Water and
Power of the City of Los Angeles,

Respondent.

) Docket Nos.
) CERCLA-9-2004-0001
) EPCRA-9-2004-0002
)

) COMPLAINT, CONSENT
) AGREEMENT AND
) FINAL ORDER
)

COMPLAINT AND CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action initiated pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045; Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9609; and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22, as revised by 64 Fed. Reg. 141 (23 July 1999). Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is the Department of Water and Power of the City of Los Angeles. ("Respondent" or "LADWP").

2. LADWP is a proprietary department of the City of Los Angeles and a municipal corporation under California law. Respondent owns and operates a facility in Los Angeles County, California, located at 13101 Sepulveda Boulevard in Sylmar, California (hereinafter the "Facility").

3. This Complaint, Consent Agreement and Final Order ("CA/FO"), pursuant to 40 C.F.R. § 22.13(b), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent, at the Facility, violated Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 304(a) and 304(c) of EPCRA, 42 U.S.C. § 11004, and their implementing regulations.

B. GENERAL ALLEGATIONS

4. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
5. The real property and improvements thereto located at the Facility are a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
6. At all times relevant to this CA/FO, the Facility produced, used or stored chlorine, Chemical Abstract Service Registry ("CAS") Number 7782-50-5.
7. At all times relevant to this CA/FO, Respondent has been the owner and operator of the Facility.
8. The Administrator of the EPA, as required under Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), has published a list of substances designated as "Hazardous Substances," which, when released into the environment, may present substantial danger to public health or welfare or the environment, and has promulgated regulations establishing the quantity of certain Hazardous Substances, the releases of which are required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). This list, including the corresponding reportable quantity ("RQ") for each Hazardous Substance, is codified at 40 C.F.R. Part 302, Table 302.4.
9. The Administrator of the EPA, as required under Section 302 of EPCRA, 42 U.S.C. § 11002, has published a list of substances designated as "Extremely Hazardous Substances," which, when released into the environment, may present substantial danger to public health or welfare or the environment, and has promulgated regulations establishing the quantity of an Extremely Hazardous Substance, the release of which is required to be reported under Section 304 of EPCRA, 42 U.S.C. § 11004. This list, including the corresponding RQs for the Extremely Hazardous Substances, is codified at 40 C.F.R. Part 355, Appendices A and B.
10. Any person in charge of a facility is required under CERCLA § 103(a), 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6(a) to immediately notify the National Response Center ("NRC") as soon as the person in charge has knowledge of a release of a Hazardous Substance from such facility in an amount equal to or greater than the RQ.
11. Sections 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and 40 C.F.R. § 355.40(b)(1) and (2) require the owner or operator of a facility at which hazardous chemicals are produced, used or stored to immediately notify the appropriate State Emergency Response Commission ("SERC") when there has been a release of a Hazardous Substance or Extremely Hazardous Substance in an amount equal to or greater than the RQ.

12. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. § 355.40(b)(3) require the owner or operator of a facility at which there has been a release of an RQ of a Hazardous Substance or Extremely Hazardous Substance to provide a written follow-up emergency notice to the SERC as soon as practicable.

13. Chlorine is a "Hazardous Substance" as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of ten (10) pounds, as designated in 40 C.F.R. Part 302, Table 302.4. Chlorine is also an "Extremely Hazardous Substance" as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), with an RQ of ten (10) pounds, as designated in 40 C.F.R. Part 355, Appendices A and B.

14. Based on information supplied by Respondent, EPA alleges that Respondent has violated Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 304(a) and (c) of EPCRA, 42 U.S.C. §§ 11004(a), (c), and their implementing regulations. Respondent neither admits nor denies these allegations.

15. Respondent is subject to the powers vested in the EPA Administrator by Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 329 of EPCRA, 42 U.S.C. § 11045.

16. Section 109 of CERCLA, 42 U.S.C. § 9609, authorizes the assessment of a civil penalty for any violation of Section 103 of CERCLA, 42 U.S.C. § 9603.

17. Section 325 of EPCRA, 42 U.S.C. § 11045, authorizes the assessment of a civil penalty for any violation of Section 304 of EPCRA, 42 U.S.C. § 11004.

18. The Administrator of EPA has delegated this authority under EPCRA and CERCLA to the Regional Administrators by EPA delegations 22-3-A and 14-31 respectively, dated October 31, 1989, and September 13, 1987. The Regional Administrator, EPA Region IX, in turn, has delegated these authorities to the Director of the Superfund Division.

C. ALLEGED VIOLATIONS

COUNT I

(Failure to Immediately Notify the National Response Center)

19. Paragraphs 1 through 18 above are incorporated herein by this reference as if they were set forth here in their entirety.

20. On or around 11:00 AM Pacific Daylight Time ("PDT") on July 8, 2002, approximately two hundred (200) pounds of chlorine were released from the Facility into

the environment during the transfer of chlorine from a delivery truck to a bulk storage tank at the Facility.

21. Respondent had actual or constructive knowledge that chlorine had been released from the Facility at or before 11:05 AM PDT on July 8, 2002.

22. Respondent did not notify the NRC of the release as required under Section 103 of CERCLA, 42 U.S.C. § 9603, until approximately 3:00 PM PDT on July 8, 2002.

23. Therefore, EPA alleges that Respondent failed to immediately notify the NRC of the release of an RQ of a Hazardous Substance in violation of Section 103 of CERCLA, 42 U.S.C. § 9603.

COUNT II

(Failure to Immediately Notify the State Emergency Response Commission)

24. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.

25. The Office of Emergency Services ("OES") was established as the SERC for the State of California in accordance with Section 301 of EPCRA, 42 U.S.C. § 11001. Immediate notification of the OES is satisfied by contacting the 24 hour Emergency Notification Telephone Number of the OES immediately after the release.

26. Respondent did not notify the OES of the July 8, 2002 release as required under Section 304 of EPCRA, 42 U.S.C. § 11004, until approximately 3:00 PM PDT on July 8, 2002.

27. Therefore, EPA alleges that Respondent failed to immediately notify the SERC of the release of an RQ of an Extremely Hazardous Substance in violation of Section 304 of EPCRA, 42 U.S.C. § 11004.

COUNT III

(Failure to Provide Timely Written Follow-up Notification to the State Emergency Response Commission)

28. Paragraphs 1 through 27 above are incorporated herein by this reference as if they were set forth here in their entirety.

29. Follow-up emergency notice to the OES is satisfied by sending written notice to the Chemical Emergency Planning and Response Commission at P.O. Box 419047, Rancho Cordova, California 95741-9047, as soon as practicable after the release.

30. Respondent did not provide written follow-up notice of the July 8, 2002 release to the OES until approximately June 13, 2003.

31. Therefore, EPA alleges that Respondent failed to provide the SERC timely written follow-up emergency notice of the July 8, 2002 release of an RQ of an Extremely Hazardous Substance in violation of Section 304 of EPCRA, 42 U.S.C. § 11004.

D. CIVIL PENALTY

32. Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19 authorize a civil penalty of up to \$27,500 per day for each day a violation of CERCLA Section 103 continues.

33. Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 40 C.F.R. Part 19 authorize a civil penalty of up to \$27,500 per day for each day a violation of EPCRA 304 continues.

34. Based on the facts alleged herein and upon all the factors which the Complainant considers pursuant to the Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act ("ERP"), including the nature, extent, and gravity of the violations, the Respondent's ability to pay, prior history of violations, degree of culpability, and any economic benefit, and such other matters as justice may require, Complainant proposes that the Respondent be assessed **FORTY-TWO THOUSAND TWO HUNDRED EIGHTY-FOUR DOLLARS (\$42,284)** as the civil penalty for the violations alleged herein.

E. ADMISSIONS AND WAIVERS OF RIGHTS

35. Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter and the action commenced in this CA/FO and over Respondent pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 C.F.R. Part 22. Respondent consents to and agrees not to contest EPA's jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA's jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

36. Respondent neither admits nor denies any allegations of fact or law set forth in Section C of this CA/FO. Respondent hereby waives any rights Respondent may have to a hearing or appeal on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, or Section 325 of EPCRA, 42 U.S.C. § 11045. Respondent hereby consents to the terms of this CA/FO and the issuance of this CA/FO without adjudication.

37. Complainant and Respondent agree that settlement of this matter is in the public interest and that entry of this CA/FO without further litigation is the most appropriate means of resolving this matter.

F. PARTIES BOUND

38. This CA/FO shall apply to and be binding upon Respondent and its agents, successors and assigns and upon all persons acting under or for Respondent, until such time as the civil penalty required under Section D has been paid and any delays in payment and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full and complete settlement of the violations alleged herein.

39. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

40. Until termination of this CA/FO, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

41. The undersigned representative of Respondent hereby certifies that he is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

G. CERTIFICATION OF COMPLIANCE

42. Upon signing this CA/FO, Respondent certifies to EPA that the Facility has fully complied with the requirements of Section 103 of CERCLA and Section 304 of EPCRA that formed the basis for the violations alleged in Section C above.

43. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

H. PAYMENT OF CIVIL PENALTY

44. Respondent consents to the assessment of and agrees to pay a civil penalty of **FORTY-TWO THOUSAND TWO HUNDRED EIGHTY-FOUR DOLLARS (\$42,284)** in full settlement of the civil penalty claims made in this CA/FO.

45. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO. Respondent shall submit two separate certified or cashier's checks as identified below:

a. **CERCLA § 109 Penalty (Docket No. CERCLA-9-2004-0001):** A check in the amount of **THIRTEEN THOUSAND, FOUR HUNDRED AND SEVEN DOLLARS (\$13,407)**, payable to "EPA Hazardous Substance Superfund," shall be sent to:

U.S. EPA, Region IX
Attn: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

b. **EPCRA § 325 Penalty (Docket No. EPCRA-9-2004-0002):** A check in the amount of **TWENTY-EIGHT THOUSAND, EIGHT HUNDRED AND SEVENTY-SEVEN DOLLARS (\$28,877)**, payable to "Treasurer, United States of America," shall be sent to:

U.S. EPA, Region IX
Attn: EPA Region IX Hearing Clerk
P.O. Box 360863M
Pittsburgh, PA 15251

46. Each check shall reference the name and appropriate docket number (CERCLA-9-2004-0001 or EPCRA-9-2004-0002), and shall be accompanied by a cover letter stating that payment is being made pursuant to this CA/FO. The cover letter and civil penalty shall be sent by certified mail, return receipt requested. Copies of the transmittals shall be sent to:

Joshua Wirtschafter (ORC-3)
Assistant Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Regional Hearing Clerk (ORC-1)
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

47. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty by the due date will result in imposition of interest from the Effective Date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. § 13.11. In addition, a twelve percent (12%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.

48. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deductible for purposes of taxes.

I. DELAY IN PERFORMANCE / STIPULATED PENALTIES

49. In addition to the interest and per annum penalties described above, in the event that Respondent fails to pay the full amount of the penalty within the time specified in Paragraph 45, Respondent agrees to pay Complainant a stipulated penalty in the amount of TWO THOUSAND, FIVE HUNDRED DOLLARS (\$2,500) for each day that default continues. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of EPCRA penalties in Section H.

50. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. § 13.11.

J. RESERVATION OF RIGHTS

51. Complainant reserves the right to take any additional action, including but not limited to the imposition of civil penalties, to enforce compliance with this Agreement or with CERCLA, EPCRA and their implementing regulations.

52. Except to the extent provided in Paragraph 38 of Section F above, this CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which Complainant has under

CERCLA, EPCRA or any other statutory, regulatory or common law enforcement authority of the United States. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with CERCLA, EPCRA, or any other applicable local, State or federal laws and regulations.

K. MISCELLANEOUS

53. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

54. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

55. Each party to this action shall bear its own costs and attorneys' fees.

56. Complainant and Respondent consent to entry of this CA/FO without further notice.

57. The Effective Date of this CA/FO is the date the Final Order is signed by EPA.

IT IS SO AGREED.

1-13-04

Date

David H. Wiggs

David H. Wiggs, General Manager
Department of Water and Power of the
City of Los Angeles

3-11-04

Date

Keith Takata

Keith Takata, Director
Superfund Division
U.S. Environmental Protection Agency,
Region IX

APPROVED AS TO FORM AND LEGALITY
ROCKARD J. DELGADILLO, CITY ATTORNEY

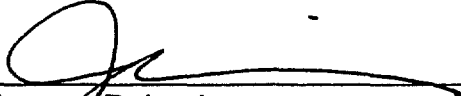
JAN 06 2004
BY [Signature]
EDWARD A. SCHLOTMAN
Assistant City Attorney

FINAL ORDER

IT IS HEREBY ORDERED that this Complaint, Consent Agreement and Final Order (Docket Nos. CERCLA-9-2004-0001 and EPCRA-9-2004-0002) be entered and that Respondent pay a civil penalty of **FORTY-TWO THOUSAND TWO HUNDRED EIGHTY-FOUR DOLLARS (\$42,284)** by payments made in the amount **THIRTEEN THOUSAND, FOUR HUNDRED AND SEVEN DOLLARS (\$13,407)**, payable to "EPA Hazardous Substance Superfund," and **TWENTY-EIGHT THOUSAND, EIGHT HUNDRED AND SEVENTY-SEVEN DOLLARS (\$28,877)**, payable to "Treasurer, United States of America," in the manner and form specified in Section H of this CA/FO within thirty (30) days after the effective date of this Complaint, Consent Agreement and Final Order, and that Respondent complete any and all tasks required by this Complaint, Consent Agreement and Final Order.

THIS FINAL ORDER SHALL BE EFFECTIVE IMMEDIATELY.

3/12/04
Date



Joanna DeLucia
Regional Judicial Officer
U.S. Environmental Protection Agency, Region IX


CERTIFICATION OF SERVICE

I certify that the original and the foregoing Complaint, Consent Agreement and Final Order in the matter of **The Department of Water and Power of the City of Los Angeles, Docket Nos. CERCLA-9-2004-0001, and EPCRA-9-2004-0002** has been filed with the Region 9 Hearing Clerk and that copies were sent return receipt requested to the following:

David H. Wiggs, General Manager
Los Angeles Department of Water
and Power
P. O. Box 51111, Room 340
Los Angeles, CA 90012

Certified Mail No.
7003 3110 0006 1999 7978

Dated: March 15, 2004


JOSEPH V. PEREZ
Legal Technician
U. S. Environmental Protection Agency
Office of Regional Counsel (ORC-2)
75 Hawthorne St.
San Francisco, CA 94105